IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

ORDER

Assistant Commissioner, Anti Evasion, Zone-II, Jaipur

Vs.

Shri Subhash Agarwal Ghasi Ram Agarwal

::

S.B. Sales Tax Revision No. 88/2006

Date of order :: July 23, 2007

PRESENT
HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. Amit Ratnawat for Mr. R.B. Mathur for the appellant
Mr. J.N. Sharma for the respondent

BY THE COURT:

Heard learned counsel for the parties.

Learned counsel for the Revenue fairly submits that the controversy involved in the present revision petition is covered by a recent judgment of this court in STR 516/1999, CTO, Anti Evasion,

Ajmer Vs. M/s. Mohan Lal Gautam Chand, Beawar, wherein the court after hearing the parties held as under :-

> *"6. From the bare perusal of the aforesaid provision, it is clear that not only learned DC (Appeals) can direct the Assessing Authority or the officer against whose order appeal has been preferred to make further enquiry but he can also set aside such order and can also confirm, cancel, vary or remand such order. Thus wide powers have been conferred upon learned DC (Appeals) to pass appropriate orders for further enquiry as well as reassessment in pursuance of the remand order. The assessee does not have any vested right in getting the assessment done by any particular forum or Assessing authority. Therefore, remand by learned DC (Appeals) to the regular Assessing Authority in place of CTO, Anti Evasion himself whose order was under challenge in the appeal, cannot be said to be bad in law.*
>
> *7. As a matter of fact, the power of assessment must be exercised by the regular assessing authority only. The power of investigation and detection of evasion of tax should be kept separate from the power to assess. That is bound to introduce more independence and objectivity in the assessment procedure and rule out the bias in assessment by the same authority who has detected the tax evasion. The role of investigator is certainly different from that of the Judge. Therefore, role of assessing authority and that of the Anti Evasion authority should also be kept independent ad separate. The department should consider making of*

the scheme for distribution of assessment powers in such manner.

8. Therefore, the impugned order of Tax Board dated 10.11.1997 is set aside and this revision petition is allowed. The regular Assessing Authority in pursuance of the order of DC (Appeals) dated 24.9.1995 would be free to undertake the assessment proceedings and pass appropriate assessment order in accordance with law."

In view of this, there is no force in the present revision petition and the same is accordingly dismissed.

It is also expected that a scheme as envisaged in para 7 quoted hereinabove, would be under formulation by the Commercial Taxes Department to separate the jurisdiction of Anti-Evasion Wing from that of the regular assessing authorities in consonance with Article 50 of the Constitution of India.

Learned counsel for the Revenue undertakes to bring both these judgments to the notice of the Commissioner, Commercial Taxes Department, Government of Rajasthan, Jaipur expeditiously and place the scheme, if any formulated by the department, before this court.

(Dr.VINEET KOTHARI),J.

Pramod
Item No. 26